

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-257-E - ORDER NO. 97-851
OCTOBER 7, 1997

IN RE: Aiken Electric Coop., Inc.,)	
)	
Complainant,)	
)	
vs.)	ORDER
)	GRANTING
)	PETITION
South Carolina Electric &)	
Gas Company,)	
)	
Respondent.)	
)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Emergency Petition for Rule to Show Cause and a Petition for Immediate Cease and Desist Order filed by Aiken Electric Cooperative (Aiken or the Cooperative) on June 13, 1997 against South Carolina Electric & Gas Company (SCE&G). The Cooperative is seeking an order from the Commission requiring SCE&G to cease and desist from providing electric service to Smile Gas Station No. 116 located in North Augusta, South Carolina.

After the filing of an Answer by SCE&G to the Petition, the Commission held a public hearing on the matter on August 14, 1997 at 2:30 P.M. in the offices of the Commission. The Honorable Guy Butler, Chairman, presided.

The Cooperative was represented by Robert E. Tyson, Jr., Esquire. The Cooperative presented the testimony of William

"Bill" Coleman and Barry Glover. SCE&G was represented by Francis P. Mood, Esquire and Winston Denmark, Esquire. SCE&G presented the testimony of D. Russell Harris and Clayton P. Boardman, III. The Commission Staff was represented by F. David Butler, General Counsel. Staff presented no witnesses.

FACTS

For some forty (40) years, the Cooperative has continuously maintained an electrical line running down S.C. Highway #230 (Martintown Road) along a 4.4 acre tract of land abutting Martintown Road in Aiken County. Smile Gas, a service station/convenience store, which is a commercial customer, operates on this tract of land. Aiken had furnished electricity to Smile Gas continuously since 1973, until recently. Subsequent to enactment of the Territorial Assignment Act, the area consisting of a distance of more than 300 feet away from either side of Martintown Road at the old Smile Gas location was assigned to SCE&G. Since the Aiken line was already in existence, Aiken could continue to maintain its existing corridor rights within 300 feet on either side of its lines.

Aiken served the premises without controversy until about April 1985, when SCE&G attempted to serve a new Smile Gas building. Aiken filed a complaint with the Commission, and the Commission ruled that the premises had not been transformed because of the addition of a new building. Further, the Commission held that the initial choice of electric supplier already had been made when Smile Gas chose Aiken.

Smile Gas recently built a new replacement building on this

same site. Smile Gas requested that Aiken provide temporary service to this building, but informed Aiken that it was Smile Gas' intentions to once again attempt to get SCE&G to provide permanent electric service to the new Smile Gas building. SCE&G apparently began construction to serve this new building long before the old building was torn down and before Aiken disconnected service.

In 1989, the contract for service between Smile Gas and Aiken officially became an at-will contract and continued until one of the two parties expressed an intent in writing to be released from the terms and conditions of the contract. Apparently, neither party has ever given written notice that it wanted to terminate the contract.

DISCUSSION

It appears from the testimony in this case that SCE&G is attempting to serve the new Smile Gas building by asserting that the new building is a new premise initially requiring service under S.C. Code Ann. Section 58-27-620(1)(d)(1976). Our review of the facts and the law indicates that this is not the case.

In 1985, Smile Gas built a new building on its existing premises. SCE&G attempted to serve this building at the request of Smile Gas. SCE&G had an existing line within 300 feet of the property on which the building was located. However, Aiken had been serving this customer since 1973 when Smile Gas chose Aiken to be its electric supplier. The Commission determined that the new building and pumps were on the premise that Aiken had previously served.

According to the Aiken Electric Cooperative, Inc. v. SCE&G 1985 case Order, the Commission concluded that several facilities or structures are considered to be one premise. The Commission Order specifically stated that "Smile #11's premises consisted of a number of structures including a large brick building which contained a liquor store, a convenience store/party shop, and a service station, four gasoline dispenser pumps,...a lighting system running down Martintown Road,...and the entire premises was paved with asphalt, concrete and/or gravel..." Commission Order No. 85-1002. Thus, it appears that Smile Gas' premises were not removed, but only transformed.

It appears to this Commission that the actions taken by Smile Gas and SCE&G in 1997 are the same actions that we prohibited in the 1985 case. In this case, Smile Gas has added a new building and extended its premises like it did in 1985. The only difference is that this time, Smile Gas planned to demolish the old buildings and build a new one. It appears that under our prior holding, this new building is just an extension of the existing premises.

Further, we have held in another similar case that transformation of existing premises does not allow a change of previously chosen electric supplier. In Order No. 96-743 issued on October 30, 1996 in the case of Laurens Electric Cooperative, Inc. v. Duke Power Company, we held that an old premise may not be reconstituted into a new premise by a change in the physical plant. We think this is true whether an old building is renovated, or a new one is constructed. As stated by the Commission in that Order, all of the buildings, either in existence or to be

constructed (or already constructed) represent one premises. Order No. 96-743 at 7-8. Since this is the case, Smile Gas may not now change electric suppliers from its original choice, Aiken Electric Cooperative.

Additional Commission precedent in this matter may be found in Carolina Power and Light Co. v. Pee Dee Electric Cooperative, Inc. Our Order No. 80-696 in that case held that the original electric supplier should serve the premises, despite the fact that the premises were to some degree transformed. As stated in that Order at 5, there is a policy reason for this holding:

The enactment of the statutory provisions currently codified in Sections 58-27-610 et seq. was intended to establish and maintain an element of certainty and reliability in the designation of the rights of electric suppliers with regard to the areas in which such suppliers may provide service. Furthermore, a related intention of the legislation was the reduction or elimination of wasteful and inefficient duplication of electrical facilities and services.

We think that the same policy reasons that were present in the Pee Dee Cooperative case are present in the case before the Commission at this time. We think that certainty and reliability in the designation of the rights of electric suppliers with regard to the areas in which such suppliers may provide service is desirable for public policy reasons in this case, as is the reduction or elimination of wasteful and inefficient duplication of electrical facilities and services.

Because of the above-stated reasoning we disagree with SCE&G's assertions that the facility is a "new" premise. We also hold that in the early 1970's, Smile Gas "initially" chose its

electric supplier, which was the Aiken Electric Cooperative. Aiken has served the premises for twenty-three (23) years. Thus, the time that an electric supplier may "initially" serve the premises is long past, and may not be reconstituted by some modification in the original premises.

Nor do we believe that the fact that the Smile Gas and the Cooperative are working pursuant to an "at will" contract has any bearing on this matter. We believe that no contractual provisions or lack thereof, should allow Smile Gas to overcome the statutory provisions applicable to this case.

Further, in light of our ruling above, we also hold that, given the circumstances, the present situation is not a customer choice circumstance. Simply because SCE&G claims an overlapping corridor does not dictate a resultant customer choice situation, especially when the customer already made its initial choice some years ago. Smile Gas made its "initial" choice some years ago when it chose Aiken Electric Cooperative.

We are also aware of the City of North Augusta's efforts to annex the territory occupied by Smile Gas. As we understand the evidence, the annexation of the area is incomplete. Therefore, we hold that the potential annexation of the area has no real legal effect on this case. Frankly, there is some question in our minds as to whether or not a complete annexation would have had any effect on our position, but we decline to rule on this issue, since the annexation has not now been completed.

IT IS THEREFORE ORDERED THAT:

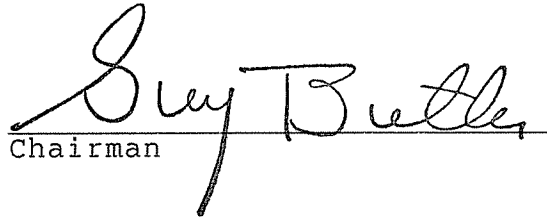
1. South Carolina Electric & Gas Company shall cease and

desist from undertaking any further construction and/or providing electric service to Smile Gas. South Carolina Electric & Gas Company shall immediately dismantle and remove all of its facilities and equipment associated with its improper work on and around these premises.

2. Aiken Electric Cooperative is hereby deemed to be the only electric supplier allowed to serve the Smile Gas premises under the law of this State.

3. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director
(SEAL)